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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION**

**VOICE INTERNATIONAL, INC.,;  
 DAVID GROBER,**

**Plaintiffs,**

**vs.**

**OPPENHEIMER CINE RENTAL,  
 LLC, et al.**

**Defendants**

**Case No.: 2:15-cv-08830-JAK(KS)**

**Joint Exhibit List and Objections**

**Status Conf.: Nov. 18, 2019**

**Time: 1:30 p.m.**

**Place: Courtroom 10B, First Street**

1 The Court, in its Order, doc. 401, pg. 3, advised counsel to confer and  
2 respond to the Court's Order doc. 382, pg. 4 regarding exhibits and file a joint  
3 exhibit list. The parties were further directed to state their basis for failing to join  
4 Plaintiff Grober in the previous joint exhibit list, doc. 397.

5 **Statement By Plaintiffs**

6 The Court's order, doc. 401, pg. 3, directs counsel to state their basis for their  
7 failure to join Plaintiff Grober in filing the joint exhibit list, doc. 397. Counsel for  
8 Voice International had fully intended to participate in that filing and would have  
9 done so if the Defendants had been willing to confer and had provided their  
10 objections timely. The Court, in its Order, doc. 382, pg. 4, advised counsel to  
11 confer regarding exhibits and prepare a joint exhibit list to be filed on Oct. 15th.  
12 Plaintiffs reached out to Defendants eight different times in an effort to confer  
13 before the filing deadline. Doc. 397, pg. 2 of 15, doc. 397-1. Counsel for Voice  
14 International, Bob Lauson and Lamar Treadwell, were both available everyday up  
15 until late morning on Oct. 15th when both were then traveling on unrelated matters.  
16 By the time attorney Mark Young emailed OPEL/Klein's objections, at 2:25 p.m.  
17 on the 15th, Treadwell and Lauson were both unreachable. Plaintiffs' never heard  
18 from attorney Ashe Puri. Pro se Plaintiff Grober has no authority to speak or sign  
19 on behalf of Voice International or its counsel, so he had no choice but to respond  
20 to Defendants' objections on his own and leave Voice International off of the filing.  
21

22 In the Meet and Confer which took place on Monday November 4, 2019, and  
23 included for Plaintiffs; Robert Lauson, Lamar Treadwell, David Grober, and for  
24 Defendants; Ashe Puri and Mark Young, Defendants stated they would not stipulate  
25 to the authenticity nor admissibility of any of Plaintiffs' exhibits and would  
26 undertake no individual discussion. Plaintiffs have marked numerous of  
27 Defendants exhibits as Stipulated to Authenticity and Admissibility.  
28

### Statement By Defendants

The exhibit list and objection table [Dkt. 397] filed on October 15, 2019 was jointly prepared by Plaintiffs and Defendants and filed by Plaintiffs. Defendants timely and in good faith participated in the preparation of the list and table.

In the Meet and Confer which took place on Monday November 4, 2019, Plaintiffs did not request stipulation to the authenticity or admissibility of any specific exhibit, which Defendants would have considered on an exhibit by exhibit basis. Additionally, many of Plaintiffs exhibits consist of multiple documents that they cannot be treated as a single exhibit.

The Court's Order [Dkt. 401] dated October 29, 2019, instructed the parties to file a joint exhibit list and table that groups exhibits according to objection. While the exhibits list has not changed, Plaintiffs substantially revised their objections.

On November 4, 2019, Plaintiff David Grober delivered, to Defendants, Plaintiffs proposed Exhibit List and Table of Objections, filename *Voice input reJoint Exhibit List V12.docx*. The parties discussed the document during a meet and confer on November 4, 2019. The exhibit list was different from the Exhibit List and Table [Dkt. 397] that the parties jointly prepared and was filed on October 15, 2019. Defendants provided their edited version of the November 4th Exhibit List and Table of Objections to Plaintiffs on November 5, 2019 at 12:48pm PST. In their edited version, Defendants responded to new objections raised by Plaintiffs, and did not change any of Plaintiffs' exhibits or objections. Defendants expected Plaintiffs to timely file that version of the Joint Exhibit List and Table of Objections. Instead, at 1:16am EST on November 6, 2019, Plaintiff David Grober sent an email to Defendants stating that the parties were "working off of different versions of the joint exhibit list." Mr. Grober attached a new version entitled *191009\_Joint ExhList V17.vn\_.docx*. The new version omitted Defendants' work

1 in connection with the November 4<sup>th</sup> exhibit list. Thus, Defendants have had to  
2 correct the exhibit list twice.

3 Plaintiffs did not provide to Defendants the Exhibits (Exhibits A-C) referenced  
4 below.

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6 **Plaintiffs' note:** Document 397, with Exhibits A-C, was filed 10/15/2019.  
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### Trial Exhibit List

Ex. # <sup>1</sup>	Description	Stip. To Authen.	Stip To Admis s	Date Identified	Dated Admittd
2	Oppenheimer Depo Ex. 2			Oppenheimer Deposition date 11/10/17	
3	Oppenheimer Depo Ex. 3			..	
4	Oppenheimer Depo Ex. 4			..	
6	Oppenheimer Depo Ex. 6			..	
8	Oppenheimer Depo Ex. 8			..	
9	Oppenheimer Depo Ex. 9			..	
10	Oppenheimer Depo Ex. 10			..	
14	Oppenheimer Depo Ex.14			..	
16	Oppenheimer Depo Ex. 16			..	
17	Oppenheimer Depo Ex.17			..	
18	Oppenheimer Depo Ex.18			..	
19	Oppenheimer Depo Ex.19			..	
20	Oppenheimer Depo Ex.20			..	
21	Oppenheimer Depo Ex.21			..	
22	Oppenheimer Depo Ex.22			..	

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<sup>1</sup>Exhibit #s 1-87 correspond to deposition exhibits in accordance with L.R. 16-6.1

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23	Oppenheimer Depo Ex.23			..	
24	Oppenheimer Depo Ex.24			..	
25	Oppenheimer Depo Ex.25			..	
26	Oppenheimer Depo Ex.26			..	
27	Oppenheimer Depo Ex.27			..	
28	Oppenheimer Depo Ex.28			..	
29	Oppenheimer Depo Ex.29			..	
30	Oppenheimer Depo Ex.30			..	
31	Oppenheimer Depo Ex.31			..	
32	Oppenheimer Depo Ex.32			..	
33	Oppenheimer Depo Ex.33			..	
34	Oppenheimer Depo Ex.34			..	
35	Oppenheimer Depo Ex.35			..	
36	Oppenheimer Depo Ex.36			..	
37	Oppenheimer Depo Ex.37			..	
38	Oppenheimer Depo Ex.38			..	
39	Oppenheimer Depo Ex.39			..	
40	Oppenheimer Depo Ex.40			..	
41	Oppenheimer Depo Ex.41			..	
42	Oppenheimer Depo Ex.42			..	
43	Oppenheimer Depo Ex.43			..	
44	Oppenheimer Depo Ex.44			..	
45	Oppenheimer Depo Ex.45			..	
46	Oppenheimer Depo Ex.46			..	
47	Oppenheimer Depo Ex.47			..	
48	Oppenheimer Depo Ex.48			..	
49	Oppenheimer Depo Ex.49			..	

1	51	Dann Depo Ex. 51			Dann Deposition	
2					April 16, 2016	
3	52	Dann Depo Ex.52			..	
4	53	Dann Depo Ex. 53			..	
5	54	Dann Depo Ex. 54			..	
6	55	Dann Depo Ex. 55			..	
7	56	Dann Depo Ex.56			..	
8	57	Dann Depo Ex. 57			..	
9	58	Dann Depo Ex. 58			..	
10	60-1	Dann Depo Ex.60-1			..	
11	60-2	Dann Depo Ex.60-2			..	
12	62	Dann Depo Ex. 62			..	
13	63	Dann Depo Ex.63			..	
14	64	Dann Depo Ex. 64			..	
15	65	Dann Depo Ex. 65			..	
16	65-4	Dann Depo Ex.65-4			..	
17	67	Dann Depo Ex. 67			..	
18	68	Dann Depo Ex. 68			..	
19	69	Dann Depo Ex. 69			..	
20	71	Dann Depo Ex. 71			..	
21	72	Dann Depo Ex.72			..	
22	73	Dann Depo Ex. 73			..	
23	74	Dann Depo Ex. 74			..	
24	75	Dann Depo Ex.75			..	
25	76	Dann Depo Ex. 76			..	
26	77	Dann Depo Ex. 77			..	
27	78	Dann Depo Ex. 78			..	
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79	Dann Depo Ex. 79			..	
80	Dann Depo Ex. 80			..	
86	Dann Depo Ex. 86			..	
87	Dann Depo Ex. 87			..	
88	Certified Copy of Patent	X	X		
89	TE Grober History & Awards			Docs. 134 & 207 in the Court docket; DG 9071, 10896, 10898, prdcd 1/16/19; DG15765 – 15783, 15525-27 prdcd 8/20/19;	
90	TE_DG 10909-10936-P's Damages Report-1			Produced 1/16/19	
91	TE_MH Transport			Produced 3/23/18 – 4/24/18; DG14479 prdcd 8/10/19	
92	TE_MPM-PH Advertising			DG3696 – 3700, 3822 Prdcd by 4/24/18; DG9288 – 9289 Prdcd by 1/16/19; DG11618 – 11625, DG 13566, Prdc 8/10/19	
93	TE_VI-MPM Checks 2000-2008 DG 15182-15407			DG15182 – 15377 Produced 8/20/19	
94	TE_VI-MPM Checks 2008-2015 DG 03266 – 3359			Produced 4/13/18	
95	TE_DG 1899-1975 ST#8224 cks_77pgs			Produce 3/23/18	
96	TE_OPEL Invoices 2006-2010_DG 9443-9471			Produced 1/16/19	
97	TE_All of Oppenheimer's Production. 00001-~00624.			Produced 12/9/16	
98	TE_All of Tom Smith's TS documents. ~001-061			Produced 8/17/17	
99	TE_All of Klein Sr.'s documents ~ KSR 01-43			Produced 7/2/19	
100	TE_All of John Dann's documents. JD0001-0081			Produced 8/29/17	
101	TE_OPELS's documents. OPEL 001-469			Produced 3/19/18	
102	TE_OPEL-OPP Inv to Norway			Produced 1/16/19	
103	TE_FedEx Opp-SE DG 9944-9945.			Produced 1/16/19	



104	TE-Mako-1. cv-08604-JZ. Dkt #'s 227,228,229,230, 233,254,255,380,381,392, 393,399,401,402,410,413			April, 2018.	
105	TE -Mako-2. cv-08830- JAK Dkt #'s 55,56,65,68,69,78,85,113,1 18,126,129,134,138,139,14 1,142,157,159,162, 175, 201, 205,207,215,220,221,222, 228,230,249-255, 267, 268- 270, 275-278, 307.			Filed with the Court in this case on the dates noted on each document.	
106	TE_Klein develop MH & Purchases_178 pgs Comms & Inv.			DG3843, DG7879-7918 produced 4/24/18; DG11925 – 11935 produced 8/10/19, DG9072-9073, 10290-10293, 10344- 10422, 10501-10793 produced 1/16/19	
107	TE_CAFC Briefs_M1- Markman.pdf			DG10057-10127, 10835 -10892, 11069 -11083 produced 1/16/19	
108	TE_Declarations and Discovery responses.pdf			DG3959-4008 produced 4/24/18; DG7962-8064 produced 5/7/18; DG8859-8862 produced 1/16/19 DG14845-14847 produced 8/10/19; discovery responses received prior 4/30/18; DG14413 – 14415 produced 8/10/19, DG 15439 15441, DG15732-16028 produced 8/20/19; DG15989-15990 produced 8/20/19;	
109	TE_DG PH development_drawgs comms.pdf			DG3689- 4051 (various #'s) produced 4/24/18	
110	TE_Pictures of_PH developmnt.pdf			DG4033, DG4165-4171, produced 4/24/18	
111	TE_PH Dev Engineers & DG with PH's.pdf			DG10937-10938, DG10905 produced 1/16/19	

112	TE_SW's drawings & Ligi. 104 pgs.pdf			DG11165-11268 produced 1/16/19	
113	TE_SW emails Sr- Smith+ctrcts.pdf			DG3832, 3863- 3867 produced 4/24/18 DG9311, DG11270-11272, 11299 – 11300, 11302-11304, 11306-11308, 11310 – 11332, 11340, 11342- 11349, 11352- 11354, 11363- 11364, 11367 produced 1/16/19 DG14452 – 14553 produced 8/10/19;	
114	TE_SW comms with Grober.pdf			DG3823-3827, 3830 produced 4/24/18	
115	TE MH sale to TV Globo.pdf			DG10801-10806 produced 1/16/19	
<del>116</del>	<del>TE_Dann Discovery prdetn JD 1-81.pdf</del>				
117	TE_MH Infr_2008-06-10 Smith Depo MH disassembly 16 min_crt seal.mp4			Produced and lodged with Court 10/24/16	
118	TE_MH Infr_2008-06-10 Smith Depo-MH Exam 1hr.m4v			Produced 8/20/19	
119	TE_MH Infr_2008-06-10 Smith Transcript_AM- PM+Exhbs.PDF			Produced 8/10/19	
120	TE_MH Infr_081120_Smith Expert report-2008 + Dkt 141-Ex2&3 Decl.pdf			Expert report produced 3/19/18; Doc 141 filed with Court 5/19/17	
121	TE_MH Infr_180118_OP Doc 216 Court Order- MSJMotDismiss.pdf			Filed 1/18/19	
122	TE_MH Infr_180201_OP Doc 220-2 Exh B_InfringeContentns.pdf			Filed 2/1/18	
123	TE_MH Infr_MH Code from Smith.pdf			DG14722 – 14763 produced 8/10/19	
124	TE_MH Infr_Smith Financial agremnts w Klein & Tutorial confirm.pdf			DG03883, DG05449-5451, produced 4/24/2018	

125	TE_MH Infr_Smith's BOM-specs-pics.pdf		DG09145, DG09160, DG09161, DG09101, produced 1/16/2019 DG14237-4254, produced 8/10/19 DG15680 produced 8/20/2019.
126	TE_MH Pic on prodctn.pdf		DG04106-04164, produced 4/24/2018
127	TE_MH use #1.pdf		DG05391, produced 4/24/2018 DG14804-805, DG10297-317
128	TE_MH Willfullness-1.pdf		DG03956-3958, DG3959-3969, DG03974-3979, DG03980-3982, DG03983-3986, DG03990-3996, DG04072-4092. produced 4/24/2018
129	TE_MH Willfullness-2.pdf		DG04266-4267, DG01443-01444, produced 4/24/2018 DG09298, DG09300, DG10902-908, prodcd 1/16/2019 DG15453-520.
130	TE_MH-PH-Alaska.pdf		DG04022, DG04133, produced 4/24/2018 DG09307, prodcd 1/16/2019
131	TE_OPEL's Production\$\$-Inv-PriorArt.pdf.		OPEL0001 – 0286: Wells Fargo#5633 OPEL0287- 0288:BKY-Dkt OPEL0289- 0458:AT&T#7794 OPEL03452-03454, OPEL03502- 517:ForgnPat, OPEL01798- 03464: Prior art. Produced by OPEL.
132	TE_OPP Production 1-624. DG 1284 - 1898.pdf		OPP000001-624. Also as DG01284- 01906. Produced by Oppenheimer.

133	TE_PH Video #1_SOC_AMPAS_Potter, etc.mp4			Produced 1/16/19	
134	TE_PH Video #2_Mammals & Hexapod.mp4			Produced 1/16/19	
135	TE_Dann's email set where where discovered M2 rentals.			Produced 4/24/2018	
136	TE_MH-PH com clients_Du-Sop-Blu .pdf			DG04016-4054.	
137	TE_Klein History			DG03845-3862, DG04013-4015, produced 4/24/2018 DG09074, DG10227.	
138	TE_Deadliest Catch & Patent suit costs.pdf			Dead Catch_DG08854	
139	TE_MH Willfullness-3.pdf			M1-Dkt 186. DG03970-3973, produced 4/24/2018 DG09086, DG10949, DG015425, DG015585-586	
140	TE_MH Willfullness-4.pdf			DG015887-5888. produced 4/24/2018 DG016005-007, DG016019-020, MY:07/25/2017 MY:3/30/2018, MY: 2/25/2019.	
141	TE_BKY docs			DG014389, DG015701-702	
142	TE_M2 Ex0640 DG 16033-16042 PH Contract with DC_Leah Sadallah			DG016033-042	
143	2013—03-25_BK Doc 16_Notice Sale, ASSET LOCATIONS, Bill of Sale to Kleins-Dann			M1-Doc 16-12pgs	
701	0520-1 Invalidity Contentions			11/6/15	
702	170703_P's Infringement Contentions Rule 11 response	X		07/03/17	
703	180514 Infringement Contentions	X	X	05/14/2018	
704	09579723 pfh			3/21/18	
705	25596019--1884	X	X	3/21/18	
706	60136756			3/21/18	
707	90014342 pfh reex2			07/23/19	

1	708	95000092 pfh reex1			403 – 802 3/21/18	
2	709	Apps dtic mil Hartmann			3/21/18	
3	710	BidAssigned			4/18/19	
4	711	Bos			3/21/18	
5	712	Claim 4 Voice Intl			4/18/19	
6	713	Claim 5 Grober			4/18/19	
7	714	Description			8/16/19	
8	715	Docket	X	X	4/18/19	
9	716	Docket 1 <sup>st</sup> lawsuit	X	X	8/16/19	
10	717	Duckworth	X	X	3/21/18	
11	718	Figs dtk141-3	X	X	5/16/17	
12	719	Final report 9.5.2014	X	X	4/18/19	
13	720	Hartmann			3/21/18	
14	721	Hollandse			3/21/18	
15	722	Invalidity Contentions 031122335405			11/16/15	
16	723	Makohead video	X	X	9/28/17	
17	724	Noninfringement			8/16/19	
18	725	Ntrl-ntis-gov-Hartmann			07/23/19	
19	726	Ntrl-ntis-gov-Wessling			07/23/19	
20	727	Ntrl-ntis-gov-West			07/23/19	
21	728	Ntrl-nasa-gov-Wessling			07/23/19	
22	729	Ntrl-nasa-gov-west			07/23/19	
23	730	Objection			4/18/19	
24	731	Oceanic production register of officers	X	X	3/21/18	
25	732	OL1810			6/4/18	
26	733	OPEI resolution 15Feb2015			3/21/18	
27	734	OPEL01798-03463			3/21/18	

736	Order approving sale	X	X	4/18/19	
737	Order claim grober			4/18/19	
738	Order claim voice int'l			4/18/19	
740	Order denying rescheduling			4/18/19	
743	Response to motion to prevent sale			4/18/19	
744	Restoration	X	X	8/12/19	
745	Table.h			07/23/19	
746	Tijsma			3/21/18	
747	TilSen40.c			07/23/19	
748	Tom Smith Depo trans	X	X	7/6/8	
749	Tom Smith Expert report			3/21/18	
750	Trustee Bill of Sale			4/18/19	
751	UF Wessling			07/23/19	
752	UF West			07/23/19	
753	US3936716			3/21/18	
754	US3986092A			3/21/18	
755	US6611662	X	X	3/21/18	
756	Voyager db erau edu Hartmann			07/23/19	
757	Welch			3/21/18	
758	Wessling			3/21/18	
759	West			3/21/18	
760	West Nasa			07/23/19	
761	WO9904224A1			3/21/18	
762	mc53.c			07/23/19	
763	mc53.cod			07/23/19	
764	mc53.err			07/23/19	

765	mc53.HEX			07/23/19	
766	mc53.LST			07/23/19	
767	mc53.PJT			07/23/19	
768	mc53.sta			07/23/19	
769	mc53.SYM			07/23/19	
770	mc53.tre			07/23/19	
801	Opp 001 – 0139			Produced on 5/23/16 (Opp1-39) and 10/21/16 (Opp40-126) and 1/9/17 (Opp127-139)	

### Joint Objection Table

Objection Grounds	P's Exhibit	Def's Exhibit	Response	Ruling
<b>FRE 106</b> These numbered Exhibit(s) are incomplete and is inadmissible under Federal Rule of Evidence 106 unless the remainder of it is introduced. Specifically, Ex. 731 is only a partial list of directors and is therefore misleading. The complete list is Ex. 73. Ex. 750 is only 1 page of the BK Trustee Bill of Sale which is also at Ex.		731, 745, 750, 762 to 770	Def Both documents are complete and accurate. Ex. 731 is a complete current list of officers and directors. A complete bill of sale is attached hereto as Ex. 750.	

1	62. The complete			
2	Bill of Sale is Ex. 143			
3	Pltfs – Obj withdrawn		701,	DEF
4	for underlines.		702,	701, 707 are proper
5	<b>701</b> is Dkt 333-		704,	summaries of invalidity
6	<u>precluded by Dkt 401,</u>		706,	contentions. FRE 611,
7	<u>Order, 402(b); 403,</u>		707,	1006.
8	<b>802.</b>		709,	
9	<b>702:</b> Precluded by 703		710,	712, 713 are relevant to
10			712,	nonwilfulness.
11	<b>704:</b> 403, 802-		713,	
12	heresay, 805, 901.		714,	704 is not hearsay. It is the
13			722	prosecution file for the ‘662
14	<b>706:</b> 403, 802, 901.		725 to	patent.
15	<b>707</b> is Klein USPTO		730,	
16	642 pg. 7/23/19 Re-		733 to	706 is the prosecution file
17	exam assigned to Art		735	for Grober’s provisional
18	Unit 3992 - <u>precluded</u>		732,	application to which the ‘662
19	<u>re FRE 802-hearsay,</u>		737,	Patent erroneously claims
20	<u>403;</u>		738,	priority. It is not hearsay
21	<b>709, 711, 714, 720,</b>		740,	and is relevant.
22	<b>721, 725-729, 732,</b>		745,	
23	<b>734, 746, 751-753,</b>		747,	707 is not hearsay. It is a
24	<b>754, 756-761,</b> prior art		748,	prosecution file for a
25	& invalid contentions,		756,	pending reexam. It may be
26	<u>precluded by FRE</u>		757 to	used for impeachment at
27	<u>402(b); lack of</u>		761	trial.
28	<u>predicate; 403, 802,</u>			
	<u>heresay, No 901</u>			
	<u>predicate.</u>			
	<b>710:</b> 401, <b>106,</b>			
	Incomplete.			



1			709,711, 714, 720, 721,	
2			725-729, 732, 734, 746, 751-	
3	<b>712-713, 730. 737,</b>		753, 754, 756-761 include	
4	<b>738, 743,</b> No res		contentions and prior art.	
5	judicata re Fla.		All of the prior art was	
6	Bankruptcy court		provided to Plaintiffs in	
7	proceeding; see Dkt.		discovery. All of the prior	
8	Order 304, <u>precluded</u>		art are self-authenticating	
9	<u>by FRE 802,</u>		government documents,	
10	<u>402(b),403; 802</u>		including issued patents and	
11	<b>722</b> is 701 re-filed,		government reports. All of	
12	<u>precluded by Dkt</u>		the prior art has been cited	
13	<u>401, FRE 402(b);</u>		by the USPTO against the	
14	<b>724:</b> 802 Heresay,		'662 patent.	
15	No 901 predicate			
16	<b>733, 735:</b> 802, 901			
17	Lack of predicate.			
18	<b>734:</b> No objection.		712-713, 730. 737, 740, 743	
19	Lack of predicate.		are relevant to issues other	
20	<b>740:</b> 802.		than res judicata precluding	
21	<b>745</b> table of values,		this lawsuit. Such other	
22	<u>precluded by 802,</u>		issues include nonwillfulness	
23	<u>402(b), 403;</u>		and claims (other than alter	
24	<b>747:</b> 106-Optional		ego) that Plaintiffs continue	
25	completeness.		to assert against Klein Sr.,	
26	<b>748:</b> 901 Predicate.		despite this Court's repeated	
27			rulings to the contrary.	
28			These documents may also	
			be used for impeachment.	

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			<p>701 is relevant to nonwillfulness.</p> <p>710 is complete.</p> <p>724 is not hearsay. It is a table that will be used during trial. FRE 611(a), 1006</p> <p>733 is a business record.</p> <p>735 has been deleted because it is a duplicate of 749.</p> <p>734 is prior art produced during discovery that may be used at trial, such as for impeachment, if necessary.</p> <p>745 is a part of the MakoHead code, and is relevant to noninfringement.</p> <p>747 is another part of MakoHead code cited by Plaintiffs in their infringement contentions, and is also relevant to noninfringement.</p>	
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			748 is Tom Smith's deposition transcript, which may be used to impeach Plaintiffs who repeatedly mischaracterize Smith's testimony.	
<b>FRE 1006</b> These Exhibits are not a proper summary and thus is inadmissible under Federal Rule of Evidence 1006.		701	Pltfs	
			701 is a proper summary of invalidity contentions. FRE 611, 1006.	

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<p><b>Other</b></p> <p>These Exhibits are not admissible for the following reasons: they are duplicative of lower numbered exhibits.</p> <p>722 = 701 728 = 726 729 = 727 731 = part of 73 739 = 736 741 = 737 742 = 738 749 = 120 750 = 62 755 = 88 801 = 97</p>		<p>722, 728, 729, 731, 739, 741, 742, 749, 750, 755, 801</p>	<p>Pltf</p> <hr/> <p>Def</p> <p>722 and 701 are different contentions. 726 and 728 are different. 729 and 727 are different. 731 is complete and current. 750 and 62 are different in arrangement. 739 has been deleted, as it is the same as 736. 749 is a part of 120. 120 is compilation of several separate documents. 741 has been deleted because it is the same as 737. 742 has been deleted because it is the same as 738. 755 is a text searchable version of the patent, which is different from 88.</p>	
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1	<b>FRE 401, 403</b>		Pltfs	
2	These numbered	6, 8,	Please see attached Exhibit	
3	Exhibits are not		B;	
4	relevant evidence as		<b>Marty Oppenheimer</b>	
5	defined by Federal		<b>Deposition Exhibits:</b>	
6	Rule of Evidence		<b># 6</b> – Declaration of M,	
7	401 and thus are		Oppenheimer, <u>FRE 801(d)</u>	
8	inadmissible under		<u>(2), 806, 901, 1007;</u>	
9	Federal Rule of			
10	Evidence 402		<b># 8</b> – Dkt 213 order from	
11		9,	prior Mako-1 case, <u>FRE</u>	
12			<u>901, 1005, 803(8)</u> shows	
13			Defs' Oppenheimer knew of	
14			the '662 patent;	
15				
16		18,	<b># 9</b> – Mako-1 appeal, Fed.	
17			Cir. Order vacating granting	
18			of summary judgment of	
19			non-infringement, see p. 14;	
20			<u>FRE 901,1005, 803(8), and</u>	
21			<u>rebuttal</u> , Defs knew of the	
22			'662 patent;	
23				
24		19,	<b># 18</b> – Mako Invoice to	
25			Oppenheimer showing	
26			Calif. Rental; <u>FRE 901,</u>	
27			<u>801(8), infringement, local</u>	
28			<u>market, competition, and</u>	
			<u>rebuttal</u> ;	
		20,	<b>#19</b> – Oppenheimer invoice	
			re lower market price;	
			infringement, <u>FRE 901,</u>	
			<u>806, 801(d)(2), rebuttal;</u>	
		22,	<b># 20</b> –Oppenheimer invoice	
			& notes value of MH. <u>FRE</u>	
			<u>901, 806, 801(d)(2),</u>	
			<u>rebuttal</u> ;	

1			# <b>22</b> – E-mail re: Orig. Prod. Sheila McCormack is in charge of rentals with Oppenheimer, <u>FRE 901, 806, 801(d)(2), knowledge, rebuttal and infringement,</u>	
2		25,		
3				
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6			# <b>25</b> – Oppenheimer rentals to Orig. Prod. occurred in Ca. <u>FRE 901, 806, 801(d)(2), 1007, infringement and rebuttal,</u>	
7		46,		
8				
9				
10			# <b>46</b> – 2007 e-mail between John Dann & Oppenheimer re: direct competition; <u>FRE 901, 801(d)(2), 806, 801(d)(2), infringement and rebuttal;</u>	
11				
12				
13		52-		
14			<b>John Dann Deposition Exhibits:</b>	
15			# <b>52</b> –2017 Law firm invoice re OPEL, <u>FRE 901, 1007;</u>	
16				
17			– Invoice from witness Tom Smith to OPEL, shows OPEL operating in Fla., <u>FRE 901, 1007, 801(d)(2), 806 and rebuttal;</u>	
18				
19				
20		58,		
21				
22				
23			# <b>58</b> – Fla. Bky Dkt 16, showing geographic areas of rentals as of 2013; <u>FRE 901, 1007, 803(8), infringement and rebuttal;</u>	
24		60,		
25				
26				
27			# <b>60</b> –Checks & Deposits on Mako-Klein Fla. Bank	
28				

1			account signed or issued by	
2			John Dann-showing Klein	
3			was doing business during	
4			Bky; used money received	
5		64	during Bky to buy Mako	
6			Assets for OPEL;	
7			<u>FRE 901, 1007, 806, 807,</u>	
8			<u>801(d)(2) infringement, alter</u>	
9			<u>ego, rebuttal;</u>	
10		67,	# <b>64</b> –Mako Transaction List	
11			shows sale of MakoHead to	
12			South Am. Co. “Gobal;”	
13			<u>FRE 901, 806, infringement;</u>	
14		74,	# <b>67</b> –Klein paid \$20,000 to	
15			Fla. Bky Trustee for assets of	
16			Mako for OPEL; <u>FRE 901,</u>	
17			<u>806, 801(d)(2), 1007,</u>	
18			<u>rebuttal, alter ego;</u>	
19		79,	# <b>74</b> –2018 e-mail from	
20			Grober to Bahamian Gov’t,	
21			re who was directors,	
22			officers of OPEL; <u>FRE 901,</u>	
23			<u>902(3-4), 807, 803(8), 1005,</u>	
24			<u>1007, 806, 801(d)(2),</u>	
25			<u>rebuttal, alter ego;</u>	
26		86,	# <b>79</b> –2013 e-mail from	
27			Tom Smith to Klein & Dann	
28			re repairs of MakoHead;	
			<u>FRE 901, 1007, 801(2), 806,</u>	
			<u>infringement, repairs, and</u>	
			<u>rebuttal;</u>	
		87,	# <b>86</b> – 2007 Oppenheimer	
			rental invoice to Norway;	
			<u>FRE 901, 1007, 801(d)(2),</u>	
			<u>knowledge, infringement,</u>	

1			<u>rebuttal,</u>	
2				
3		90,	# <b>87</b> –2012 Oppenheimer internal e-mail re: repair of MakoHead, <u>FRE 901, 1007,</u>	
4			<u>801(d)(2), 806, infringement,</u>	
5			<u>&amp; rebuttal;</u>	
6				
7		96,	# <b>90</b> –Mako-1 Dkt 516-1 Pltfs damage report; <u>FRE</u>	
8			<u>901, 1007, 807, 803(8), 701,</u>	
9			<u>Defs had knowledge of Pltfs</u>	
10			<u>Basis and fact for damages,</u>	
11			<u>lost profits;</u>	
12		102,	# <b>96</b> –2006 Invoice showing OPEL invoices Calif Co. for rental; <u>FRE 901, 801(d)(2),</u>	
13			<u>806, infringement, compete-</u>	
14			<u>tion, rebuttal, &amp; alter go;</u>	
15		107,	# <b>102</b> 2007 Mako-1 rental invoice to Norway, shows nature of the market; <u>FRE</u>	
16			<u>801(d)(2), 806, rebuttal;</u>	
17				
18		109,	# <b>107</b> – Mako-1 Appeal Brief of Grober; contains photos with descriptions – if reviewed by expert Smith,	
19			<u>FRE 703, refresh Grober</u>	
20			<u>memory, FRE 802(5),</u>	
21			<u>Grober skilled in the Art;</u>	
22				
23			# <b>109</b> Grober's inventor's notes showing processes shared by Grober assistant Waterford to Klein and Tom Smith; <u>FRE 803(6),</u>	
24			<u>901, 1007, infringement,</u>	
25				
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1		115,	<u>skilled in the Art, copying,</u>	
2			<u>non-obviousness, and</u>	
3			<u>rebuttal;</u>	
4			<b># 115</b> –Grober’s Photos	
5			showing evolution of the	
6		118,	invention; <u>FRE 901, 1007,</u>	
7			<u>803(6), background, skilled</u>	
8		119,	<u>in the Art, Panduit factors,</u>	
9			<u>non-obviousness;</u>	
10			<b># 118</b> – Smith 1hr video	
11			deposition from which	
12			16min video submitted to	
13			the Court, was created.	
14		123-	<u>FRE 901, 1007, 801(d)(1),</u>	
15			<u>806, 801(d)(2), rebuttal,</u>	
16			<u>basis for expert opinion;</u>	
17		130,	<b># 119</b> –2008 Video	
18			deposition of Tom Smith re:	
19			inspection of the	
20			MakoHead; <u>FRE 901, 1007,</u>	
21			<u>801(d)(1), 806, 801(d)(2),</u>	
22			<u>rebuttal, basis for expert</u>	
23			<u>opinion;</u>	
24		133-	<b># 123</b> 2008 Code Notes of	
25			Tom Smith re MakoHead;	
26			<u>FRE 802(5), 803(6), 806,</u>	
27			<u>801(d)(2), rebuttal;</u>	
28		141	<b># 130</b> –Video of Grober	
			testing MakoHead side by	
			side with Perfect Horizon	
			on a boat; <u>FRE 402, 601,</u>	
			<u>701, 901, 1007;</u>	
			infringement factors,	
			performs same function in	

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			<p>same manner;</p> <p><b># 133 – 134.</b> Video of Perfect Horizon, MakoHead, Academy presentation, side-by-side comparisons, etc.  <u>FRE 402, 601, 701, 901, 1007</u>; infringement factors, performs same function in same manner;</p> <hr/> <p>Def</p> <p>Def  Regarding Exhibits 5-10, 22, 25, 32, 33, 45-47, 58, 60, 64, 86, 96, 102 all of which are invoices or correspondence of Mako Products, this Court has mandated: “Throughout Mako's bankruptcy proceedings, Plaintiffs were aware of its alleged infringement. They sought to participate in those proceedings to assert claims. That request was denied by the bankruptcy court. Plaintiffs did not seek any appellate review. Because those findings have res judicata effect, Plaintiff is barred from seeking to relitigate them in this action” March 7, 2017 Order, Dkt. 118, pp 13-14.</p> <p>Regarding 8, 9, 22, 86,</p>	
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1			Plaintiffs' justification that	
2			"Defs knew of the '662	
3			patent" is a pre-text to	
4			introduce irrelevant	
5			cumulative evidence to	
6			confuse jurors.	
7			18, 19, 20, 46 are	
8			correspondence and invoices	
9			that precede the lawsuit by	
10			more than 6 years, and do	
11			not evidence damages, or	
12			any Panduit factors.	
13			90, the Mako I damages	
14			report, is a wholly deficient	
15			report, inapplicable	
16			(provided to other parties in	
17			another case many years	
18			ago), and irrelevant, as	
19			addressed in pending	
20			briefing. [Dkt. 396]	
21			107 is an appeal brief in	
22			Mako-I, which is hearsay	
23			and irrelevant to any issues.	
24			109 is hearsay and irrelevant	
25			because trade secret	
26			misappropriation has not and	
27			could not be claimed, and	
28			because the MakoHead and	
			'662 patent are vastly	
			dissimilar, and because it is	
			wholly uncorroborated.	
			115, 130, 133, 141 are	
			hearsay, irrelevant and	
			wholly uncorroborated.	

1			All exhibits offered by	
2			Plaintiffs to prove alter ego,	
3			are irrelevant at trial. [Dkt.	
4			382, p. 3/11]. Such exhibits	
5			include 52, 56, 58, 60, 64,	
6			87.	
7			Plaintiffs failed to produce	
8			initial disclosures or	
9			responses to damages	
10			discovery, and now	
11			misrepresent mere invoices,	
12			filings in a different case	
13			involving different parties,	
14			and miscellaneous email	
15			correspondence as evidence	
16			of Plaintiffs' complex and	
17			implausible damages claim,	
18			advanced by Plaintiffs for	
19			the first time long after the	
20			close of discovery, and not	
21			supported by any evidence	
22			produced during discovery.	
23			None of the exhibits	
24			supports a determination of	
25			an amount of lost profits,	
26			that Plaintiffs would have	
27			made sales but for alleged	
28			infringement, of demand for	
			the patented product,	
			absence of acceptable non-	
			infringing substitutes, that	
			the Plaintiffs had the	
			manufacturing and	
			marketing ability to make all	
			or a part of the allegedly	
			infringing rentals actually	
			made by the Defendants, or	
			any other factor pertaining to	
			a damages computation.	

1			Plaintiffs assertions to the contrary are unavailing.	
2			Plaintiffs have disavowed a reasonable royalty. All	
3			exhibits offered as evidence of damages is therefore	
4			irrelevant. Such exhibits include 18, 19, 20, 22, 25,	
5			46, 58, 64, 86, 90, 96, 102.	
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15	<b>FRE 801, 802</b>		Pltfs	
16	These numbered	46,	Please see	
17	Exhibits are out-of-	53,	attached	
18	court statements	60,	Exhibit C	
19	offered for their truth	64,		
20	and therefore	67,	<b>As to Plaintiffs' use of the</b>	
21	inadmissible hearsay.	74,	<b>following Exhibits:</b>	
22		79,		
23		86,	– 46, 53, 58, 60, 64, 67, 74,	
24		87,	79, 86, 87, 90, 96, 102, 107,	
25		96,	109, 115, 119, 123, 130,	
26		109,	Please see the references	
27		115,	cited above pertaining to	
28		119,	relevancy, admissibility and	
		130,	use. Some exhibit will only	
			become relevant during trial	
			testimony of a witness,	
			direct or cross-exam;	
			<b>Plaintiffs submit the</b>	

1			<b>following responses as to hearsay for the following Exhibits:</b>	
2				
3		52,	# <b>52</b> – 2017 Cafferata Corp	
4			Inv re Reg Agent; FRE 901,	
5			806, rebuttal; alter ego -	
6			Klein pays OPELs debts;	
7		55,	# <b>55</b> , – subpoenaed Klein	
8			Fla. bank account record	
9			deposits showing California	
10			rentals received during bky	
11			by either Klein personally	
12			or OPEL; <u>FRE 806,</u>	
13			<u>801(d)(1 &amp; 2), 901, 1007,</u>	
14			<u>803(6),</u>	
15		56,	# <b>56</b> , <u>FRE 613, (prior Fla.</u>	
16			<u>Bky 2004-Exam depo</u>	
17			<u>statements by Dann) re</u>	
18			<u>credibility to contradict</u>	
19			<u>statement to Trustee re</u>	
20			<u>income) alter ego, rebuttal;</u>	
21		57,	# <b>57</b> –2013 Tom Smith e-	
22			mail to John Dann re royalty	
23			checks to Smith for rentals	
24			of MakoHead; shows	
25			conflict of interest of	
26			witness Smith, lack of	
27			objectivity as an expert;	
28			<u>FRE 702, 901, 801(d)(1),</u>	
			<u>613, impeachment,</u>	
			<u>credibility, rebuttal;</u>	
		91,	# <b>91</b> –Subpoenaed records	
			from third party Boat US to	
			impeach John Dann re:	
			MakoHead on boat in	

1			Bahamas for rental; <u>FRE</u>	
2			<u>901, 613, 1007;</u>	
3	103,		# <b>103</b> –Fedex waybill	
4			showing rental to Calif	
5			Spectrum Effects in 2006	
6			re: Oppenheimer knew of	
7			Calif rentals; <u>FRE 613,</u>	
8	106,		<u>1007, impeachment;</u>	
9			# <b>106</b> –2004 Quick Book	
10			records of Klein showing he	
11			personally purchased	
12			component parts re	
13			Waterford’s knowledge of	
14			what part Grober had	
15			already tested and knew	
16			worked, re: copying, non-	
17	118,		obviousness, infringement;	
18	129,		FRE 801(d)(2), 806, 613,	
19	133 -		803(6), 1007, impeachment	
20	134		and rebuttal;	
21	135,		# <b>118</b> – Smith 1hr Depo	
22	136,		video- <u>FRE 613, 801(d)(1-</u>	
23			<u>2), impeachment &amp;</u>	
24			<u>infringement;</u>	
25			# <b>129</b> – Mako-1, Rule 11 &	
26			exhibits show willfulness,	
27			and technical infringement	
28			issues. <u>FRE 613, 801(d)(1-</u>	
			<u>2), impeachment &amp;</u>	
			<u>infringement;</u>	
			# <b>133-134</b> –Plaintiffs’	
			video clips. <u>FRE 402, 601,</u>	
			<u>701, 901, 1007;</u>	
			infringement factors,	
			performs same function in	

1			same manner;	
2		138		
3		140	<b># 135</b> – Dann’s emails show rentals and relationship to Oppenheimer. <u>FRE 901, 801(d)(1), 613, impeachment, credibility, rebuttal;</u>	
4			<b># 136</b> –2007 MakoHead advertisement showing direct competition by Mako-	
5			1 under direction of Klein-	
6			Dann re infringement in Calif; <u>FRE 613, 801(d)(1-2), impeachment &amp; infringement;</u>	
7			<b># 138</b> – Willfulness. FRE 902-6 Publications	
8			<b>#140</b> – 2017 Mark Young letter to Attorney Lauson re: misstating OPEL has no access to Mako Fla. bank account-which is Klein’s account; <u>FRE 801(d)(2), statement by agent contradicted by other documents, impeachment;</u>	
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24			Def	
25			Plaintiffs' responses to do not present any exceptions to hearsay. Plaintiffs conflate relevance (which	
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			<p>Defendants do not concede) with hearsay. The following are inadmissible hearsay:</p> <p>FRE 613, 801(d)(1 &amp; 2) do not apply to Exhibits 55, 57, 106, 136, 140, because a prior inconsistent statement or other prerequisite has not been shown.</p> <p>FRE 803 does not apply to Exhibits 55, 97, 106, 131 for lack of foundation. 97 and 131 are not exhibits, but thousands of pages produced in discovery. 106 is irrelevant to all issues in this case. Waterford is not a witness.</p> <p>FRE 806 does not apply to Exhibits 52, 55, 106, or 131 because a prerequisite hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E), has not been admitted.</p> <p>FRE 901 and 1007 are not exceptions to the rule against hearsay. Exhibits 52, 55, 57, 91, 97, 103, 106 and 108 are inadmissible hearsay.</p> <p>Ex. 140 – In the letter, Mr. Young informed Defendants that the bank</p>	
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1			account was closed. The	
2			letter is hearsay and not	
3			subject to any exception.	
4			The closing of the bank	
5			account is irrelevant to the	
6			issues in this case.	
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15	The following		Pltfs	
16	Exhibits are not		Each of the exhibits 97-	
17	exhibits, but rather		101, 131 and 132 is a set of	
18	are voluminous		documents produced as a	
19	compilations of		group by a single person or	
20	materials that should		entity. Exhibit 108 is a	
21	be separated as		compilation of related	
22	exhibits.		documents making up one	
23		97-	exhibit.	
24			# <b>97</b> – These are 623 pages	
25			of discovery produced by	
26			Oppenheimer Defs'; <u>FRE</u>	
27			<u>901, 801(d)(1-2), 803(6),</u>	
28			<u>1007, relevant as to Panduit,</u>	
			<u>lost profits; Pltfs agree to</u>	
			prepare a summary relevant	
			to Panduit or damages;	

1		101,		# <b>101</b> – appears to be a duplicate of # 97	
2					
3		108,		# <b>108</b> –Klein’s responses to Grober’s requests for admissions, re jurisdiction; to the extent Pltfs prove denied admission # 3, they seek attorney fees reasonably related to that proof at trial; FRE 613, 801(d)1-2), 901;	
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10		131,		# <b>131</b> – This 2135 pages produced in discovery by OPEL may be used to rebut, impeach or contradict any trial testimony; or be offered through a witness with knowledge on any element of Pltfs claims; <u>FRE 601, 613, 803(6), 1007, 801(d)(1-2), 806, 807 as determined at trial;</u>	
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18		132		# <b>132</b> – This 624 pages produced in discovery by Oppenheimer may be used to rebut, impeach or contradict any trial testimony; or be offered through a witness with knowledge on any element of Pltfs claims; <u>FRE 601, 613, 803(6), 1007, 801(d)(1-2), 806, 807 as determined at trial;</u>	
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	Exh 762-770. Defendants state these exhibits are code, but Plaintiffs are unable to open and view. Their file format includes: .cod,. err, .HEX, LST, .PJT, .sta, .SYM, .tre. Plaintiffs asked for PDF versions, but none were given.	762- 770	<b><u>Defs</u></b>  Defendants have provided pdf copies of the source code to Plaintiffs, after Plaintiffs requested the pdf copies.	
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Dated: November 7, 2019

Respectfully submitted,

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